Inspector Abdul Manaf stated it was the Customs business if rice was brought to Rantau Panjang and not the business of the Police. The Inspector went on to say that he had no business with rice as a police officer. I take this to mean that according to Inspector Abdul Manaf the Police are not concerned with rice smuggling. I think Inspector Abdul Manaf is not correct to say that the smuggling of rice is the concern of the Customs officers. Under section 2 of the Customs Ordinance, 1952 an "officer of Customs" means a police officer and under section 7 of the said Ordinance all police officers not below the rank of Inspector shall have and may exercise all the powers by this Ordinance conferred on senior officers of Customs. Furthermore, under section 33(3)(d) of the Police Ordinance, 1952 it shall be the duty of police officers to take lawful measures for assisting in carrying out revenue and excise laws. Under section 35 of the Police Ordinance, 1952 a police officer is deemed to be always on duty to perform the duties and exercise the powers granted to him under the Police Ordinance, 1952 or any other written law at any place in the Federation where he may be doing duty.

Under section 57(1)(i) of the Evidence Ordinance the Court can take judicial notice of the geographical divisions of the world. Therefore, the Court can take judicial notice that Rantau Panjang is a border town vis-a-vis Thailand.

Under L.N. 166 dated the 24th day of March, 1953 Rantau Panjang is designated as a place of import and export by road or railway of all goods (Federal Subsidiary Legislation, 1953, page 255).

Under the Customs (Prohibition of Imports) Order, 1954 (L.N. 624 dated 26th October, 1954) the importation of rice and padi in whatever form is prohibited except under and by virtue of an import licence.

Therefore I am of the opinion that when a police officer, in a position to do a favour to another person likely to require such favour, received from such other any money or other valuable thing without consideration or any obstensible reason, then these very circumstances afford reasonable and sufficient grounds for holding a sufficient case made out by the prosecution whether under section 165 of the Penal Code or section 3(b) of the Prevention of Corruption Ordinance, 1950, in the absence of evidence in rebuttal. *A fortiori,* where there is, as in this case a charge under the Ordinance of 1950, being alternative to a charge under the Penal Code, clearly a presumption of law under section 5 of the Ordinance lays the onus on the defence of proving the contrary. Hence the decision of the learned President, which takes no account, or refused to take any account, of the provisions of section 5 is manifestly insupportable.

The appeal is allowed and the order of acquittal is accordingly set aside and I direct that the accused/respondent be tried afresh before another President.

Appeal allowed.

Solicitors:—*Wrigglesworth & Co.*

VALLENTINE, DUNNE & ASSOCIATES LTD. v. ANDREW S. H. CHANG

[O.C.J. (Gill J.) January 12, 1963]

[K.L. — Civil Suit No. 300 of 1961]

Principal and Agent—Power of attorney—Contract by attorney—whether contract under power of attorney.

Contract—Survey as preliminary to mining operations—Whether completed contract.

The defendant on payment of a sum of $5,000 obtained a power of attorney from one Sze Chok Pang concerning all his present and future estate, right, title and interest in the land which formed the subject matter of a prospecting permit issued to the said Sze Chok Pang. The defendant further paid a sum of $15,000 to a person with whom Sze Chok Pang had entered into an agreement relating to the permit to have the agreement cancelled.

The defendant and Sze Chok Pang at a joint interview with the plaintiffs arranged with the plaintiffs to carry out a prospecting survey of the land. The plaintiffs were aware that the permit was in the name of Sze Chok Pang and that the defendant had power of attorney in respect of it.

In a claim by the plaintiffs against the defendant for their professional fees and disbursements as mining engineers, the defendant pleaded (1) agency under the power of attorney and (2) that there was no completed contract but only an arrangement under which plaintiffs were to provide an estimate for a contract.

Held: (1) the various payments made by the defendant indicated that he was not acting as an agent but in his own right and the arrangement entered into with the plaintiffs was in his own right and not as agent;

(2) the arrangement was a completed contract to survey and the defendant must therefore pay the amount claimed to the plaintiffs.

ACTION.

S. D. K. Peddie for the plaintiffs.

A. L. Hills for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action by the plaintiffs for the recovery of a sum of $7,879.07, being their professional fees and disbursements as mining engineers and licensed surveyors in respect of survey and prospecting work carried out by them at the defendant's request in an area of about 800 acres in the Santi Forest Reserve, Johore.

The facts of the case about which there is little or no dispute are that one Sze Chok Pang obtained a prospecting permit dated the 6th September, 1960 (151/60) over the area in question. As he did not have any or sufficient money, he made arrangements with various people to have the area prospected for bauxite, iron or tin. At first he entered into an agreement with a man called Nair, but as he was not satisfied with Nair he went to see one Teo Kheng Hian who in turn introduced him to one Lim Teng Kung. Later, along with one Toh Boon Peng he entered into an agreement with Lim Teng Kung and Teo Kheng Hian, under which agreement all the expenses for prospecting were to be paid by Lim and Teo. Nothing would appear to have been done in pursuance of that agreement because Lim Teng Kung told Sze Chok Pang that he was not in a position to finance him. Lim Teng Kung then took Sze Chok Pang to the defendant, who agreed to provide the necessary finance. On 13th September, 1960 Sze Chok Pang in consideration of a sum of $5,000 paid to him by the defendant executed an irrevocable power of attorney in favour of the defendant concerning all his present and future estate, right, title and interest in the land comprised in the prospecting permit (D. 35).

On 19th September, 1960 the defendant together with Lim Teng Kung and Sze Chok Pang travelled from Singapore to Kuala Lumpur, went to the offices of the plaintiff company and there had a meeting with Mr. A. K. Jones, a director of the company, with a view to appointing the company to carry out prospecting work on the permit area. The travelling expenses of the three people from Singapore were paid by the defendant. Nair agreed to take $15,000 to get out and this money was paid to him by the defendant on 21st September, 1960.

The plaintiffs' case, based on the evidence of Mr. Jones (P.W.5), is that at the meeting in September, 1960 the defendant enquired if the plaintiffs could investigate a bauxite deposit in Johore and said that he would be responsible for the payment of all their fees. It was made known to Mr. Jones that the prospecting permit was held by Sze Chok Pang with whom the defendant had some arrangement, although the exact nature of the arrangement was not disclosed. Mr. Jones said in evidence that the defendant dealt with him direct without taking instructions from Sze Chok Pang and that at the end of the interview he understood that his company were going to act for the defendant. He also said that he had had previous experience of a permit being in the name of one person and the person interested in the mining being somebody else altogether. In some cases if the area was proved to be an economic proposition the permit holder would accept an outright payment or take a tribute or a share or interest in any company formed to operate the mine. In his experience it was the person to whom the permit holder passed over some rights who paid the fees for prospecting. It is significant that under the Power of Attorney (D. 35) granted to the defendant Sze Chok Pang was to get a tribute of 50 cents per ton on all ore shipped and to get free of charge a 10% shareholding in the company to be formed for carrying out all mining operations on the land in question.

After the interview and on the same day Mr. Jones wrote a letter to the defendant confirming that the plaintiffs would be pleased to act as the defendant's consulting engineers and mining advisers. In the letter were set out the various steps which the plaintiffs proposed to take for the purpose of prospecting the area and they also set out the various charges for their services. On 24th September, 1960 the defendant wrote to the plaintiffs thanking them for their letter of the 19th September and making a suggestion for the use of a diamond drill instead of hand pitting by 30/40 labourers. He did not query any of the charges quoted by the plaintiffs nor did he at any time write to ask them not to take any of the steps outlined in the letter. The only item queried was the commission to be paid to the plaintiffs if their services were retained after the commencement of mining operations. The defendant's letter of 24th was acknowledged by the plaintiffs' letter of 28th September in which they gave the defendant further information about their prospecting programme.

The plaintiffs proceeded to carry out prospecting work in accordance with the steps which they had indicated in their letters of 19th and 28th September. A survey party was sent to the permit area which spent a total of 49 days to complete their work. One of their engineers by the name of S. H. Chong visited the permit area twice on inspection and generally to arrange prospecting programme, and a senior boring clerk spent 11 days on the land. An itemised interim bill dated the 4th November, 1960 for a sum of $5,452.07 was then sent to the defendant. This was followed by the final bill dated the 2nd December, 1960 for a sum of $2,427. P.W.5 gave evidence as to the various items in the two bills in order to explain how the total in each case was arrived at. The amounts charged for travelling time were queried by counsel for the defence. However, the witness pointed out that by their letter dated the 15th December the defendant was informed that charges for travelling time were normal and that the defendant did not at any time query them.

P.W.5 was subjected to a lengthy cross-examination but his evidence remained unshaken. He stated under cross-examination that he had no direct conversation with Sze Chok Pang at the meeting on 19th September, 1960. He thought at the time that the plaintiffs were acting for the defendant and he said so in his letter of 19th September, 1960. The rates set out in the letter of 19th September were discussed at the meeting although he could not recall definitely whether they were agreed to then. He knew at the time that Sze Chok Pang was the prospecting permit holder but he would expect payment from the person to whom the right to prospect and eventually to mine the area passed. He admitted that in a number of letters written to various Government Departments the plaintiff company did say that they were appointed by Sze Chok Pang, but this was done because Sze Chok Pang was the permit holder and therefore all correspondence had to be carried on in his name even though he did not appoint them at the meeting on 19th September, 1960. He was emphatic that it was not Sze Chok Pang who appointed them as his consulting engineers and mining advisers and maintained that the defendant said at the meeting on 19th September that he would be responsible for the payment of their fees. He also denied that the present action was brought against the defendant because the plaintiffs were unable to get any money from Sze Chok Pang.

The evidence of Lim Teng Kung (P.W.6) on behalf of the plaintiffs is that Sze Chok Pang, who was introduced to him by one Mr. Teo Kheng Hian, approached him for financial help to operate a mine. As he was not in a position to finance Sze Chok Pang, he took him to the defendant who agreed to provide financial help. Before this Sze Chok Pang had made other financial arrangements with a man called Nair, but he was not satisfied with Nair. Nair agreed to take $15,000 to get out and the defendant paid Nair the sum of $15,000. During the preliminary negotiations samples of ore were taken and sent for analysis. Access to the permit area was by boat from Changi Point in Singapore. At first boats were hired to go to the permit area, but as this was found to be too expensive the defendant bought a small boat. The defendant also bought some hammers and parangs for the prospecting work and he also provided the labour when the plaintiff company dug the pits on the land.

As regards the visit to the offices of plaintiff company on 19th September, 1960 P.W.6 said that he accompanied the defendant and Sze Chok Pang. Indeed he had recommended the plaintiff company to them. They asked Mr. Jones whether his company would be able to undertake prospecting work. Mr. Jones said that they could and added that he would write to the defendant. The witness went on to say that he accompanied Mr. Chong of the plaintiff company to the permit area on 14th October, 1960 at the defendant's request. The defendant never complained to him about the plaintiff company nor did he ask him to stop work on the permit area. Under cross-examination he said that at the discussion on 19th November, 1960 the defendant did not say that he would be responsible for the payment of fees but hastened to add on re-examination that the arrangement in Singapore was that the defendant would be responsible for all expenses in connection with the piece of land over which Sze Chok Pang had a permit.

Mr. Chong Sing Hian otherwise known as S. H. Chong (P.W.7), an engineer with the plaintiff company testified that in 1960 he carried out some work in prospecting a forest reserve in Johore. Some of the letters in connection with the prospecting work were written by him to the defendant. He wrote a letter dated 11th October, 1960 to the defendant and he thought that he must have obtained confirmation from the defendant by telephone as requested in the last paragraph of that letter. He visited the permit area on 15th October, 1960 and then put up a report on his findings in his letter to the defendant dated the 20th October, 1960. At the close of this letter he made certain recommendations and the defendant did not tell him not to carry out any of those recommendations. On 17th October he had a telephone conversation with the defendant as a result of which he wrote him a letter of the same date. He paid a second visit to the permit area on 20th October, 1960 and then sent a letter to the defendant dated the 28th October, 1960. The suggestion set out at page 2 of this letter as regards the use of a post hole drill was made by the defendant. In the same letter he set out the future programme which had been fully discussed with the defendant and with which he had agreed. The arrangement as regards analysis and payment of fees set out in the last paragraph of this letter was also agreed to by the defendant and the programme as a whole as set out in the letter was carried out. Mr. Chong stated further that while he was engaged on this project he did not speak to Sze Chok Pang on the telephone and all his telephone conversations were with the defendant. Under cross-examination he was asked certain questions as regards his charges, but his evidence otherwise was not seriously challenged. He admitted that in his letter dated 13th October, 1960 to the State Forest Officer, Johore (P.13), he said that they were acting on behalf of Sze Chok Pang,

but he was emphatic that the defendant did not say at any time that he was instructing the plaintiff company on behalf of Sze Chok Pang or that he was acting on behalf of Sze Chok Pang.

The rest of the evidence for the plaintiffs in this case is the evidence of certain Government officials who stated that they received some letters from the plaintiff company which purported to be letters written on behalf of Sze Chok Pang. There is also the evidence of a boring clerk employed by the plaintiff company as regards the time spent by him on the permit area.

The defendant's evidence in answer to the claim, very briefly, is that he was all along acting as the agent of Sze Chok Pang who had executed in his favour a power of attorney dated the 13th September, 1960 which was duly registered in this court. He admitted that he paid Sze Chok Pang $5,000 on the execution of this power of attorney and that he negotiated with the Malaya Union Company, of which he is the managing director, for the payment of this money. His company also paid $15,000 to Nair to make him agree to cancel his previous agreement with Sze Chok Pang. As regards his visit to the offices of the plaintiff company, his evidence is that Lim Teng Kung recommended the plaintiff company to him and Sze Chok Pang and did most of the talking at the meeting. He stated further that they asked the plaintiff company to give them an estimate of the cost of prospecting the permit area. The second leg of his defence would appear to be that all the work that the plaintiffs did on the permit area was merely to arrive at an estimate and that no such estimate was ever conveyed to him. No charges were discussed at the meeting on the 19th September, 1960 as the plaintiffs had to see the land first and nothing was said as to who would pay the charges. In any event he did not at any time make himself responsible for payment. However, he admitted receiving all the letters addressed to him by the plaintiff company. I do not consider it necessary to go into any greater details of his evidence as I formed the impression that he was not a truthful witness. In the face of all the other evidence in this case I find it difficult to believe his story that he was present at the meeting on 19th September, 1960 merely to help Sze Chok Pang as his agent because Sze Chok Pang does not speak English.

Sze Chok Pang (D.W.2) was called on behalf of the defendant. He said that he approached the defendant in 1960 to operate the bauxite mine. He went to the offices of the plaintiff company and saw P.W.5 there but he did not speak at the meeting. All he did was to show his prospecting permit. He said he knew that the plaintiffs did some prospecting work and that the defendant should pay for this prospecting work because it was so stated in an agreement drawn up by Drew and Napier. It is true that this witness was treated as a hostile witness and that a statement made by him to learned counsel for the defendant belied his evidence in court. However, he was emphatic that he told the interpreter who explained his statement to him that he was not responsible for payment to the plaintiffs and that the defendant was.

On that evidence the questions which I have to decide are (1) whether the defendant in his discussions with Mr. Jones of the plaintiff company was acting merely as agent for Sze Chok Pang and is therefore not liable, (2) whether there was a concluded agreement between the defendant personally and the plaintiff company under which the defendant agreed to pay the professional fee and other charges of the plaintiffs for prospecting the permit area, and if so, whether such professional fees and charges are reasonable.

Considering the evidence as a whole, I have no hesitation in saying that the defendant personally asked the plaintiffs to prospect the permit area and that he agreed to pay their fees and other charges. On this point I accept the evidence of Mr. Jones. It is significant that Mr. Jones wrote a letter to the defendant on the very day of the discussions, confirming the agreement and setting out the charges. The defendant thanked the plaintiffs for this letter and at no time did he write back to the plaintiff company to say that there had been no agreement or to question their charges.

It is abundantly clear that right from the beginning the plaintiffs looked to the defendant for payment and the defendant did not at any time give any indications to them to think otherwise. It is also abundantly clear that the defendant spent considerably large sums of money in connection with the prospecting of the permit area. He paid $5,000 for the power of attorney given to him by Sze Chok Pang under which he obtained considerable rights including the right to prospect the permit area. He paid $15,000 to Nair to buy him off.

The falsity of his claim that he was merely acting as the agent for Sze Chok Pang is demonstrated by the evidence of Sze Chok Pang himself. I am not forgetting that Sze Chok Pang's evidence was discredited to a certain extent, but in the light of all the other evidence in this case I have no reason to doubt his evidence in court that he did not say that he employed the plaintiffs through Mr. Chang (the defendant) and that he would be responsible for

payment. Sze Chok Pang's further statement on oath that if he had been able to pay the expenses he would not have given the power of attorney to the defendant is significant and goes to show that the defendant was to be responsible for payment of all the expenses connected with the preliminary survey and examination of the permit area. It is also significant that after the bills were sent to the defendant, he did not at any time write back to the plaintiffs to say that he was not liable.

In the circumstances I find as a fact that the defendant appointed the plaintiffs as his consulting engineers and mining advisers at the meeting on 19th September, 1960 and that there was a concluded agreement between them which was confirmed in writing by the plaintiffs on the same day and never repudiated by the defendant.

As regards the amount claimed, the only items challenged are charges for travelling time and the engineer's expenses. All these charges were notified to the defendant and as I have stated above they were never questioned. I am satisfied that the amounts claimed by the plaintiffs are fair and reasonable.

In view of my finding that the defendant personally appointed the plaintiffs to carry out the prospecting work over the permit area and that he agreed to pay their charges, there will be judgment for the plaintiffs for $7,879.07 and taxed costs.

Judgment for the plaintiffs.

Solicitors:—*Bannon & Bailey; Donaldson & Burkinshaw.*

HITAM v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) March 11, 1963]

[Kuantan — Criminal Appeal No. 1 of 1963]

Criminal Procedure—Sentence—Inadequacy of sentence that can be imposed by Magistrate—Course to be taken by Magistrate who is also President of Sessions Court—Courts Ordinance, 1948, s. 85.

Criminal Evidence—Previous convictions—Record of, to be supplied to court—To be read and explained to accused.

If the prosecution feels that a sentence of one year's imprisonment is inadequate the prosecution should file the case in the Sessions Court and not in the Magistrate's Court.

In this case the accused pleaded guilty on a charge under section 454 of the Penal Code. The learned Magistrate purporting to exercise his powers under section 85 of the Courts Ordinance, 1948, took into consideration the accused's long list of previous convictions and sentenced him to 3 years' imprisonment and 12 strokes of the rattan plus one year police supervision. The accused appealed against the sentence.

Held: if in the opinion of the learned Magistrate his powers would be inadequate he should take the necessary steps to transfer the case to the Sessions Court. He cannot when sitting as such Magistrate assume the powers of a Sessions Court President.

Observations on procedure to be adopted by Magistrate who is also President of the Sessions Court in such cases.

Observations on need to supply Court with a copy of the list of previous convictions of the convicted person and duties of the Court and prosecuting officer in such cases.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

Sheikh Abdul Rahman (Deputy Public Prosecutor) for the respondent.

Hashim J. (delivering oral judgment): In this case the accused was charged under section 454 of the Penal Code and was tried in the Magistrate's Court at Kuantan. The accused pleaded guilty. Since the accused had a long list of convictions the learned Magistrate at the end of the case sentenced him to 3 years imprisonment and 12 strokes of rattan plus one year police supervision. The learned Magistrate quoted section 85 of the Courts Ordinance as his authority to exercise the powers of a President of the Sessions Court. The appeal is against sentence only.

The procedure in this case was wrong. The accused was tried in the Magistrate's Court. As I have said time and again, if the prosecution feels that the sentence of one year is inadequate the prosecution should file the case in the Sessions Court and not in the Magistrate's Court. The accused had 13 previous convictions and if the prosecution felt that he should get more than one year the man should have been charged in the Sessions Court. That is the fault of the prosecution. When the learned Magistrate found that one year was inadequate he should have transferred the case to the Sessions Court and then heard it as a President of the Sessions Court. Section 85 of the Courts Ordinance reads as follows:—

"85. Subject to the limitations contained in this Ordinance a First Class Magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed three years' imprisonment of either description or which are punishable with fine only and offences under Sections .....of Penal Code.

Provided that if a First Class Magistrate is of the opinion that in the circumstances of the case, if a conviction should result, the powers of punishment which he possesses would be inadequate, he shall take the necessary steps to transfer the case for trial to a Sessions Court."

If in the opinion of the Magistrate his powers would be inadequate he should take the necessary